



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 13, 1999

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

G. Michael Blessington, PC
Law Offices
4111 N. Lincoln Boulevard
Oklahoma City, OK 73105

RE: MUR 4818
MUR 4933
Walt Roberts
Walt Roberts for Congress
Chris Clark, as treasurer

Dear Mr. Blessington:

On October 15, 1998, the Federal Election Commission notified Walt Roberts, Walt Roberts for Congress and Chris Clark, as treasurer ("your clients"), of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint, denoted MUR 4818, was forwarded to them at that time.

Upon further review of the allegations contained in the complaint, and information provided by your clients, the Commission, on October 6, 1999, found that there is reason to believe that Walt Roberts knowingly and willfully violated 2 U.S.C. §§ 441a(f) and 441f, that Walt Roberts for Congress and Chris Clark, as treasurer, knowingly and willfully violated 2 U.S.C. §§ 441a(f), 441f and 434(b) and that Walt Roberts for Congress and Chris Clark, as treasurer, violated 2 U.S.C. § 434(a)(6)(A), provisions of the Act.

Also on October 6, 1999, the Commission, based upon information ascertained in the normal course of carrying out its duties, opened another matter in connection with a \$50,000 loan received by your clients. In that matter, denoted as MUR 4933, the Commission found reason to believe that Walt Roberts, Walt Roberts for Congress and Chris Clark, as treasurer, knowingly and willfully violated 2 U.S.C. § 441b(a).

The Factual and Legal Analyses, which formed a basis for the Commission's findings in both MUR 4818 and 4933, are attached for your information.

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All responses to the enclosed Subpoenas to Produce Documents and Orders to Submit Written Answers must be submitted to the General Counsel's Office within 30 days of your receipt of this letter. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Any additional materials or statements you wish to submit should accompany the response to the Orders and Subpoenas. Any additional statements should also be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that violations have occurred and proceed with conciliation.

If your clients are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of these matters or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of these matters. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

These matters will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public. If you have any questions or would like to discuss these matters, please contact Xavier K. McDonnell, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Scott E. Thomas
Chairman

Enclosures
Orders and Subpoenas (2)
Factual and Legal Analyses (2)

SUBPOENA TO PRODUCE DOCUMENTS
ORDER TO SUBMIT WRITTEN ANSWERS

TO: Walt Roberts


c/o G. Michael Blessington, P.C.
Law Offices
4111 N. Lincoln Boulevard
Oklahoma City, OK 73105

Pursuant to 2 U.S.C. § 437d(a)(1) and (3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order and Subpoenas you to produce the documents requested on the attachment to this Subpoena. Legible copies which, where applicable, show both sides of the documents may be substituted for originals.

Such answers must be submitted under oath and must be forwarded to the Office of the General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463, along with the requested documents within 30 days of receipt of this Order and Subpoena.

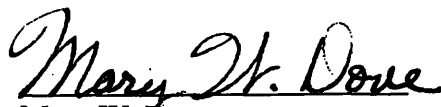
WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his
hand in Washington, D.C. on this *12th* day of *October*, 1999.

For the Commission,



Scott E. Thomas
Chairman

ATTEST:



Mary W. Dove
Secretary to the Commission

Attachments

Instructions and Definitions
Questions and Document Requests

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INSTRUCTIONS

In answering this Subpoena to Produce Documents and Order to Submit Written Answers, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each response is to be given separately and independently, and is to repeat verbatim the interrogatory or document request to which it is responding. Unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories or requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the following interrogatories and document requests shall refer to the time period from January 1, 1998 to the present.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" or "your" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers; employees, whether paid or unpaid; supervisors; volunteers; agents or persons otherwise working on behalf of or at the request of the named respondent; co-workers; subordinates; staff or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers, records and magnetic or electronic media of every type in your possession, custody, or control, or known by you to exist. The term document includes but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, check registers, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained. If a document request calls for a document that is maintained on or in a magnetic, optical or electronic medium (for example, but not limited to computer tape, diskette, or CD-ROM), provide both "hard" (i.e., paper) and "soft" (i.e., in the magnetic or electronic medium) copies, including drafts, and identify the name (e.g., WordPerfect, Microsoft Word for Windows, Pro Write, etc.) and version numbers by which the document(s) will be most easily retrieved.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document, the author of the document, and all recipients of the document (including all persons, other than the primary recipient(s) of the document, who received copies, such as "cc" and "bcc" recipients).

"Identify" with respect to a natural person shall mean state the full name, the most recent business and residence addresses and the telephone numbers of the person, the present occupation or position of such person, the social security number of the person, and the nature of the connection or association that person has to any party in this proceeding.

If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed distinctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and may otherwise be construed to be out of their scope.

QUESTIONS AND DOCUMENT REQUESTS

1. During 1998, you reportedly received funds of between \$65,000 and \$67,500 from a "friend"/undisclosed source. See enclosed Factual and Legal Analysis. State whether such funds were received by you. If so:

- a. identify the friend/undisclosed source who made the payment(s);
- b. state the date when the payment(s) were made and the date(s) when the funds were received by you;
- c. state the amount of the payment(s);
- d. state the manner in which the payment(s) were made, e.g. , check, money order, cash;
- e. identify the account into which the funds were deposited (include account number(s), name of bank(s), or other institution and identify the account owner(s));
- f. identify and produce all documents related to the payment(s), including but not limited to any written agreement, or instruments related to or evidencing funds, bank account statements or deposit slips, checks, check registers, check ledgers, correspondence, memoranda.

2. State whether the payment referenced in Interrogatory 1 was a loan. If so:

- a. provide all the terms of the loan, e.g., when payment was due, rate of interest, identify any collateral;
- b. what was the stated purpose in obtaining the loan (the reason why you borrowed the money);
- c. succinctly describe your discussions with your friend/undisclosed source about the purpose of the loan, and specifically if there was discussion that it was to be used -- directly or indirectly--- in connection with your 1998 Congressional campaign;

d. identify all persons involved in your obtaining this loan (including any involved in suggesting, arranging or soliciting such loan);

e. state whether the loan was repaid, and if so, state the date and amount of such repayment and identify the source of the funds (how you raised the funds) ;

f. identify and produce all documents related to the payment(s), including but not limited to any written agreement, or instruments related to or evidencing funds, bank account statements or deposit slips, checks, check registers, check ledgers, correspondence, memoranda

3. Disclosure reports of Walt Robert for Congress ("Roberts campaign") show a payment of \$67,500 on August 10, 1998 to Strother, Duffy & Strother for a "media buy." State when it was first determined and/or agreed that the Roberts' campaign would make this purchase, and identify and produce all documents related to that purchase, including but not limited to proposals, contracts, agreements, correspondence, memoranda, notes, scripts, invoices, purchase orders, checks, check registers, check ledgers, bank account statements.

4. When the Roberts campaign first reported the \$67,500 contribution from you on August 13, 1998, it was not reported as a loan. Later—on September 11, 1998—the Roberts campaign reported that the \$67,500 was a loan. Explain the reason for this difference, specifically stating whether it reflects a change in the terms of your \$67,500 contribution from a gift to a loan. Identify and produce all documents related to any change in the terms of the transaction or that related to this change in the reporting of the nature of the \$67,500.

5. It was reported that during 1998, you purchased and sold some cattle (with the funds discussed in Interrogatory 1, borrowed from the undisclosed friend). See enclosed Factual and Legal Analysis. State whether you purchased and sold cattle during 1998. If so:

- a. identify from whom you purchased the cattle;
- b. state how many cattle you purchased and the total amount of money paid for such cattle;
- c. provide the date(s) when you purchased such cattle;
- d. identify who you sold the cattle to;
- e. state how many cattle you sold and the total amount of money received from the sale of such cattle;
- f. state the date(s) when such cattle were sold by you;

g. identify the account(s) into which funds from the cattle sales were deposited (include the account number(s), name of bank(s) or other institution(s) and identify the account owner(s));

h. identify and produce all documents related to such cattle purchase(s) and sale(s), including but not limited to sales agreements or contracts, receipts, invoices, correspondence, bank account statements, deposit slips, checks, check registers, check ledgers, memoranda, notes.

6. It was reported that during August or September of 1998, you sold artwork to raise \$150,000 for Roberts for Congress. See enclosed Factual and Legal Analysis. State whether you raised such funds, and if so:

a. state how you raised such funds;

b. state whether the artwork was sold at an auction.

c. if there was an auction, identify all persons involved in planning and carrying it out;

d. state the date(s) when the artwork was sold;

e. if there was an auction, state how many persons were in attendance and identify all known persons in attendance;

f. if there was an auction, state whether there was any fee or charge in connection with attending such auction, and if so, state the amount charged per person and the total amount received from such fees or charges;

g. identify each person who purchased any piece of artwork;

h. state how much each purchaser paid for the artwork, and the manner in which each purchaser made payment, e.g., check, money order, cash;

i. state the total number of pieces of artwork sold;

j. state the total amount received from all sales of the artwork;

k. identify the account(s) into which all proceeds from the sale of the artwork were deposited (include account number(s), name of bank(s) or other institution(s) and owner(s) of the accounts(s));

l. identify and produce all documents related to the sale of the artwork, including but not limited to notes, memoranda, invoices, contracts, agreements, lists (including any lists of attendees or purchasers), correspondence, memoranda, checks, check registers, check ledgers,

money orders, bank account statements and deposits showing the receipt of the proceeds from the artwork

7. State the manner in which the sale of the artwork was advertised or communicated to others, e.g., via posters, flyers, billboards, radio, television, telephone, correspondence, radio, television, and:

- a. state all the costs incurred in such advertisements or communications;
- b. identify who paid any such costs;
- c. identify and produce all documents related to such advertisements or communications, including but not limited to lists, notes, memoranda, agreements, correspondence, flyers, posters, scripts, newspaper, radio or television advertisements, checks, invoices.

8. State whether any of the proceeds from the artwork were provided to the Roberts campaign or directly or indirectly used in connection with your 1998 Congressional campaign. If so:

- a. identify each of the deposits or transfers of such funds into any account of the Roberts campaign, providing the dates, amounts and the account(s) into which each was deposited;
- b. identify and produce all documents related to such deposits or transfers, including but not limited to deposit slips, documents memorializing any transfers, bank account statements, checks, check registers, check ledgers, money orders, agreements, correspondence.

9. According to your Ethics in Government Act statement ("EIGA") during 1998, you had an interest in real property identified as the "Auction Building." With respect to such property:

- a. identify all persons who had title to it from 1998 to the present;
- b. identify all persons who were mortgagors, co-signers or guarantors on any mortgage(s) of such property from 1998 to the present;
- c. state whether either Gene or Agnes Stipe had signed, co-signed, or acted as guarantors of the initial mortgage you had taken on such property;

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d. identify and produce documents related to the first mortgage, including but not limited to copies of the title to the property, the loan application, the HUD-1 statement and the mortgage instruments.

10. You obtained a loan from McAlester Industrial Credit, Company, Inc. ("McAlester") on September 1, 1998 and appear to have loaned funds of the same amount to the Roberts campaign that same day. See enclosed Factual and Legal Analysis. With respect to the loan:

- a. state whether you obtained the loan from McAlester for use in your campaign;
 - b. identify all those persons involved in obtaining the loan from McAlester (including any that arranged, suggested or recommended that McAlester be the source of such a loan);
 - c. state why you chose to seek a loan from McAlester (given that it reportedly was in the business of making industrial loans);
 - d. identify the collateral used in obtaining the loan, and specifically whether it was the Auction Building referenced in Interrogatory 9.
 - e. if the collateral was real property, state whether an appraisal was done in connection with the loan and state the amount of your equity interest in that property at the time the loan from McAlester was applied for and/or approved;
 - f. state whether any other person signed for the \$50,000 loan or was otherwise responsible for repaying the loan from McAlester, i.e., co-signer, co-mortgagor, guarantor, and if so, identify any such person(s);
 - g. identify and produce all documents related to the loan from McAlester, including but not limited to agreements, checks or money orders (front and back), bank account statements evidencing the receipt of the funds, checks, check registers, check ledgers, appraisals, loan applications, correspondence or memoranda.
11. State whether you repaid the loan to McAlester. If so:
- a. state the date that it was repaid;
 - b. state the source of the funds used to repay the loan, and if the funds were borrowed, identify the lending institution from which you obtained the loan to repay McAlester, state the terms of that agreement, identify the collateral used and identify any co-signers or guarantors of such loan;
 - c. identify and produce all documents related to repayment of the loan to McAlester, including but not limited to copies of checks or money orders (both sides) bank account

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statements evidencing the payment of such funds, checks, check registers, check ledgers, loan applications, appraisals, correspondence or memoranda.

12. The Roberts campaign disclosure reports, indicate that you made the following contributions/loans from "personal funds":

- a. \$67,500 loan on August 5, 1998
- b. \$35,500 contribution on March 31, 1998
- c. \$17,000 loan on August 17, 1998
- d. \$10,000 loan on September 22, 1998
- e. \$2,650 loan on December 1, 1998

With respect to each of the contributions/ loans listed above, identify the assets that were liquidated, sold, withdrawn or otherwise used to make each contribution/loan, and specifically:

a. Identify all cash, stocks, bonds or other forms of savings or investments used to make each contribution/loan and:

- i. provide the amount of money received from each withdrawal, sale or liquidation;
- ii. identify the financial institution(s) and account(s) from which such funds were derived;
- iii. identify all persons with authority to make withdrawals on such account(s);
- iv. provide the date of each withdrawal, sale or liquidation.

b. identify all personal property (other than cash, stocks, bonds, etc.) that was sold or mortgaged to make each contribution/loan, and

i. identify the purchaser of each piece of personal property that was sold or mortgaged;

ii. provide the amount of money you received through each sale or mortgage;

- iii. provide the date on which each sale occurred or mortgage executed.
- c. identify all real property that was sold or mortgaged to make each contribution/loan,
and
- i. identify the purchaser or mortgagee of each;
- ii. provide the amount of money received by you through each sale or mortgage;
- iii. provide the date on which such sale occurred or such mortgage was executed.
- d. provide the date in which you acquired an interest in each of the assets identified in response to subparts a-c of this question.
- e. identify and produce all documents related to any of the candidate contributions/loans listed above, and/or the sale or liquidation of assets from which such contributions/loans were derived, including but not limited to correspondence, memoranda checks, check registers, check ledgers, money orders, bank deposits slips, bank account statements, loan applications, appraisals.

13. State whether you were involved in any way, including but not limited to soliciting, seeking, requesting, suggesting or collecting, contributions received by the Roberts campaign from Ginger Barnes, Jamie Benson, Shelly Dusenberry, Gloria Ervin, Cynthia Montgomery, Dana Thetford, Deborah Turner or Charlene Spears (for dates and amounts, see the enclosed factual and legal analysis). If so:

- a. state your involvement, e.g., was it soliciting, collecting, etc.;
- b. state whether you were involved in any way, or aware of, the making any payments or the giving of any forms of compensation or gifts to such persons by the Stipe Law Firm or Gene Stipe in connection with their contributions to the Roberts campaign, and if so, identify who made such payments, gave such compensation or gifts;

c. identify and produce all documents related to such contributions, including but not limited to correspondence, memoranda, checks, check registers, bank account statements.

14. State whether Walt Roberts for Congress occupied any office space at the Stipe Law Firm. If so:

- a. state the specific location and address of the office space;
- b. state the time frame when such space was occupied;
- c. state the amount of space occupied, e.g. square footage, number of rooms;
- d. state the amount which Walt Roberts for Congress paid to occupy such space;
- e. identify and produce all documents related to the use of such space, including but not limited to contracts, agreements, correspondence, memoranda, checks, check registers, bank account statements.

FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Walt Roberts

RE: MUR 4818
MUR 4933

I. GENERATION OF MATTERS

MUR 4818 was generated by a complaint filed by Senators Don Nickles and James M. Inhofe, and Representatives Tom Coburn, Ernest Istook, Jr., Steve Largent, Frank D. Lucas, Wes W. Watkins and J.C. Watts, Jr., and their respective campaign committees (collectively "complainants").

The complaint alleges that Walt Roberts, a 1998 candidate for Oklahoma's Third Congressional District ("candidate"), his authorized committee, Walt Roberts for Congress Committee, and its treasurer ("Roberts campaign" or "committee"), engaged in an illegal laundering scheme in connection with funds totaling up to \$217,500, that were reported as loans from the candidate. The complainants contend that Mr. Roberts and his campaign knowingly and willfully accepted the contributions and misreported the true source of such funds, in violation of 2 U.S.C. §§ 441a(f) and 434(b).

MUR 4933 was generated by the Commission in the normal course of carrying out its supervisory duties. See 2 U.S.C. § 437g(a)(2). It involves a \$50,000 loan made to the Roberts campaign on September 1, 1998, consistently reported as a candidate loan, the source of which appears to have been McAlester Industrial Credit, Company, Inc. ("McAlester Inc."), a corporation.

II. APPLICABLE LAW

The Federal Election Campaign Act of 1971, as amended (the "Act"), limits the amount that persons other than multicandidate committees may contribute to any candidate for federal office to \$1,000 per election. 2 U.S.C. § 441a(a)(1)(A). Candidates and political committees are prohibited from knowingly accepting contributions in excess of the limitations at Section 441a. 2 U.S.C. § 441a(f). Candidates for Congress may make unlimited expenditures from their "personal funds." 11 C.F.R. § 110.10(a).¹

Any candidate who receives a contribution or obtains any loan in connection with his or her campaign shall be considered as having received such contribution or obtained such loan as an agent of his or her authorized committee. 2 U.S.C. § 432(e)(2); 11 C.F.R. § 101.2(a).

The term "contribution" includes any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purposes of influencing a federal election.

2 U.S.C. § 431(8)(A)(i). The term "anything of value" includes all in-kind contributions and providing any goods or services without charge, or at a charge which is less than the usual and normal charge. 11 C.F.R. § 100.7(a)(1)(iii)(A). The "usual and normal" charge is the price of the goods in the market from which they ordinarily would have been purchased at the time of the contribution, i.e., the fair market value. 11 C.F.R. § 100.7(a)(1)(iii)(B); *see also* Advisory Opinions ("AO") 1995-24, 1995-8, 1991-10, n. 1, 1984-60.

¹. The Commission's regulations define "personal funds" as: (1) "Any assets which, under the applicable state law at the time he or she became a candidate, the candidate had legal right of access to or control over, and with respect to which the candidate had either: (i) Legal and rightful title, or (ii) An equitable interest"; or (2) Salary or other earned income from bona fide employment, dividends and proceeds from the sale of the candidate's stocks or other investments, bequests to the candidate; income from trusts established before candidacy; income from trusts established after candidacy of which the candidate is a beneficiary; gifts of a personal nature which had been customarily received prior to candidacy; proceeds from lotteries and similar legal games of chance. 11 C.F.R. § 110.10(b)(1) and (2). A candidate may also use a portion of assets jointly owned with his or her spouse, as provided in 11 C.F.R. § 110.10(b)(3).

The entire amount paid as the purchase price for a fundraising item sold by a political committee is a contribution. 11 C.F.R. § 100.7(a)(2). A review of several AOs demonstrates how the Commission has applied the rule. For example, the Commission has stated that a political committee's sale of artwork donated by artists is fundraising activity and thus subject to the limitations and reporting requirements of the Act. AO 1980-34; AO 1982-24. The Commission has also stated that when the sale of goods or services is for the purpose of raising funds for a campaign, rather than for "genuine commercial purposes," contributions result and in such circumstances, the activity was subject to the Act and its limitations, prohibitions, reporting and notice requirements. AO 1989-21 (sale of goods); AO 1992-24 (proceeds from candidate's non-political speeches); AO 1980-24 (sale of tickets to event hosted by volunteer entertainers).

The Act provides that it is unlawful for any corporation to make a contribution or expenditure in connection with a federal election. 2 U.S.C. § 441b(a). Candidates and political committees are prohibited from knowingly accepting contributions from corporations. *Id.* The Act exempts from the definition of "contribution" a loan of money made by certain institutions, e.g., a State Bank, a federally chartered depository institution, or a depository institution the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation ("FDIC") or the National Credit Union Administration, made in the ordinary course of business, but specifies that such loan: (i) shall be considered a loan by each endorser or guarantor, in that proportion that each endorser or guarantor bears to the total number of endorser or guarantors; (ii) shall be made on a basis which assures repayment, evidenced by a written instrument, and subject to a due date or amortization schedule; and (iii) shall bear the usual and customary interest rate of the lending institution. 2 U.S.C. § 431(8)(B)(vii).

All contributions made by a candidate to his or her committee, including candidate loans, and all loans guaranteed by the candidate, must be reported in accordance with 2 U.S.C.

§ 434(b)(B) and (G). If a candidate or political committee obtains a loan from a permissible lending institution, the political committee must provide specific information set forth in 11 C.F.R.

§ 104.3(d)(1) and (2), including a certification from the lending institution that the borrowers' responses are accurate, and a copy of the loan agreement.

Political committees must report the identification of each person who makes a contribution or contributions with an aggregate value of in excess of \$200 during the reporting period, together with date and amount. 2 U.S.C. § 434(b)(3). A principal campaign committee of a candidate must, within 48 hours of receipt of any contribution of \$1,000 or more received after the 20th day but more than 48 hours before any election, submit notices setting forth the name of the candidate, office sought, identification of the contributor(s), date of receipt and amount. 2 U.S.C. § 434(b)(6)(A).

The Act provides that no person shall make a contribution in the name of another person or knowingly permit his or her name to be used to effect such a contribution and no person shall knowingly accept a contribution made by one person in the name of another person. 2 U.S.C. § 441f; 11 C.F.R. § 110.4(b).

The Act provides that the Commission may find that violations are knowing and willful. 2 U.S.C. § 437g. The knowing and willful standard requires knowledge that one is violating the law. *Federal Election Commission v. John A. Dramesi for Congress Committee*, 640 F. Supp. 985 (D. N. J. 1986). An inference of a knowing and willful violation may be drawn "from the defendants' elaborate scheme for disguising" their actions and that they "deliberately conveyed

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information that they knew to be false to the Federal Election Commission.” *United States v. Hopkins*, 916 F.2d 207, 214-215 (5th Cir. 1990). “It has long been recognized that ‘efforts at concealment [may] be reasonably explainable only in terms of motivation to evade’ lawful obligations.” *Id.* at 214, *quoting Ingram v. United States*, 360 U.S. 672, 679 (1959).

III. BACKGROUND/ALLEGATIONS

Walt Roberts garnered the most votes in the primary election held on August 25, 1998, and he won the runoff election held on September 15, 1998. Mr. Roberts lost the general election on November 3, 1998 to Representative Wes Watkins.

According to news reports, Roberts is a former state legislator, a rancher and an auctioneer. The Roberts campaign’s reports indicate that the candidate was the source of the following funds, totaling \$182,650:

DATE	AMOUNT
March 31, 1998	\$ 35,500
August, 5, 1998	\$ 67,500 loan ²
August 17, 1998	\$ 17,000 loan
September 1, 1998	\$ 50,000 loan
September 22, 1998	\$ 10,000 loan
December 1, 1998	\$ 2,650 loan
TOTAL	\$182,650

The complainants point to information in the public record suggesting a pattern of illegal fundraising. The attachments to the complaint question how Mr. Roberts, with limited income and assets, could make loans of these amounts. Complaint at Exhibits 1 and 3.³ They urge the

² In response to inquiries from the Commission’s Reports Analysis Division (“RAD”) about the \$67,500 loan, the Committee reported that “The candidate used personal funds only to fund the loan from himself to the campaign.” Complaint at Exhibit 8.

³ The candidate’s Ethics in Government Act (“EIGA”) statement, dated July 6, 1998, and his amended statement, dated October 9, 1998, disclose income of \$17,251 for the covered months of 1998 and \$64,862 for all of

Commission to "fully investigate the campaign activities" of the Roberts campaign "with particular emphasis upon the unreported, excessive and unlawful third-party contributions."

Complaint at page 5. The complaint focuses on the \$67,500 loan made to the campaign on August 5, 1998, and on the candidate's sale of self-made sculptures through which he allegedly generated approximately \$150,000 for the campaign.

According to news reports, when questioned about the source of the \$67,500 loan to his campaign, the candidate claimed that he borrowed funds from a friend, purchased cattle with the funds, promptly sold the cattle without making any profit and then loaned the proceeds to his campaign. The candidate refused to identify the friend. It appears that the amount which the candidate borrowed from the secret friend was \$67,500, the same amount that he loaned to his campaign on August 5, 1998. During the campaign, the candidate reportedly stated that the loan from the undisclosed friend was a "handshake deal with no paperwork and no payments for a year." Complaint at Exhibit 2.

In support of the allegations about the loan and cattle purchases and sales, the complaint points to the conflicting or at least differing assertions which the candidate reportedly made about the transactions. At one point, the candidate reportedly claimed that he received the loan from the friend on August 1, 1998. Complaint at Exhibit 1. As news articles point out, since the loan was made to the campaign on August 5, the alleged cattle purchases and sales would have occurred almost immediately. Another report indicates that the candidate claimed that he received the loan from the unknown source about sixty days before selling the cattle, which, the

1997. On his EIGA statements, the candidate's total assets consisted of an "Auction Building" valued at between \$50,001 and \$100,000 (but with a mortgage of between the same listed amounts) and horses valued at \$15,001 to \$50,000. As discussed later, in his amended EIGA statement, the candidate included the "artwork" he claimed to have sold at the auction for \$150,000.

article concludes, would mean that he borrowed it in late May or early June. Complaint at Exhibit 5. The complaint and news articles point out that neither the loan nor the cattle were reported on the candidate's Ethics in Government Act ("EIGA") statement, which was signed July 6, 1998. In response to questions about this, the candidate, at one point reportedly claimed that the cattle was left off his EIGA statement by accident, but a day later the candidate is claimed to have asserted that he did not yet own the cattle at the time the form was filed.

Complaint at Exhibit 3.

The complaint alleges that the purchase and sale of cattle, if it occurred at all, was not a bona fide business transaction, but a sham transaction to raise funds for Roberts' campaign. Included with the complaint is a news article which questions whether the cattle was sold to the same friend who made the \$67,500 loan to the candidate. Complaint at Exhibit 1. The complaint points out that Roberts reportedly refused repeated requests from reporters to disclose any documents related to the alleged cattle purchases or sales.

The complaint asserts that other funds used in connection with the campaign were excessive contributions, specifically funds raised through the sale of artwork created by the candidate. Roberts apparently sold 29 pieces of art, western bronze sculptures that he allegedly created, and used the funds (or some portion of them) in connection with his campaign. Complaint at page 4. According to the complaint and press reports, the candidate sold the sculptures for a total of \$150,000 at a single auction held sometime during the Summer of 1998, probably in August or early September. Complaint at page 4 and at Exhibit 9. Roberts allegedly used part of the proceeds from the sale of the sculptures to repay his undisclosed friend the previously discussed \$67,500. He also reportedly used the funds from the alleged sale of sculptures to make the \$17,000 loan on August 17, 1998. Complaint at Exhibit 4.

The complainants argue that the sale of the sculptures was a fundraising activity of the campaign, and, as sculptures were reportedly sold for as much as \$12,000 each, were excessive contributions. Complaint at Exhibit 9. The complaint also states that sale of the artwork resulted in excessive contributions because the prices paid would appear to exceed market value.

Complaint at page 4. In support of the claim that the sale of the sculptures were not bona fide transactions, the complaint points out that in the initial EIGA statement, dated July 6, 1998, the candidate did not include with his assets any sculptures. It was only after the sale of the artwork which yielded \$150,000 received press attention that the candidate amended his EIGA statement to include such artwork.⁴ The complainants further allege that given the apparent time of the auction, probably in late August or early September of 1998, the campaign should have filed 48 hour disclosure notices for the contributions raised at the auction. *See* 2 U.S.C.

§ 434(a)(6)(A).

The Roberts campaign's October Quarterly Report disclosed a \$50,000 personal loan from the candidate on September 1, 1998. In response to RAD's inquiries about the source of the loan, the committee stated that the funds were loaned to the candidate by McAlester Inc. Upon further inquiry from RAD, the campaign provided copies of the loan documents, which indicate that the loan was secured through a second mortgage on real estate in the city of

⁴ On October 9, 1998, after news reports in September of 1998, indicated that the candidate had allegedly raised \$150,000 by auctioning off sculptures he had created, but that such assets were not reported on his EIGA, the candidate amended his EIGA statement. The amended statement revealed that, during the period covered by the initial filing, the candidate had possessed: "artwork created and produced by the candidate." The candidate valued the artwork at between \$100,001 and \$250,000. In a cover letter with the amended EIGA, the candidate provided two reasons why these assets were not initially included: "(1) These were not considered by me to be income producing assets as I did not have any intention of selling them at the time; and (2) I felt that since they were my own creations and no fair market value had been established for them, that if they had been reported, the value would not have reached the reportable amount of \$1000.00."

McAlester. The mortgage had an 11% interest rate, and was payable in two \$25,000 installments on March 31 and August 31, 1999.

In a response to RAD's inquiries, counsel insisted that loan was never made to the Committee or to the campaign by the company and is thus a personal loan. Counsel explained that the loan was secured through a building owned by the candidate. This is apparently a second mortgage on the Auction Building (the only piece of real estate identified on the candidate's EIGA statement). A press report indicates that State Senator Gene Stipe and his wife co-signed the first mortgage on the Auction Building. Complaint at unmarked exhibit.⁵ Another press report states that McAlester Inc. "is owned by a longtime friend and political ally of Stipe." Complaint at Exhibit 2.

In response to RAD's letters and calls informing them that the loan was not from a permissible source, in March of 1999, McAlester Inc. assigned the \$50,000 mortgage to "The Bank N.A." In exchange for the assignment, McAlester received \$50,000 from The Bank, N.A. in the form of a cashier's check. The Roberts campaign provided documentation in an attempt to show the assignment of the mortgage and that the loan to McAlester has been repaid.

IV. ANALYSIS Procedural Defense

The candidate generally denies violations of the Act, but does not address or specifically contest the allegations about the sources of the loans in question. Instead, the respondent mistakenly asserts that the complaint does not comply with subsections 111.4(c) and d(1) and (2) and that the alleged failure to comply with those subsections requires dismissal of the complaint.

⁵ This news article is the very last exhibit. It would have been Exhibit 17, but it was not included in the exhibit list.

Contrary to the respondent's assertions, the complaint substantially provides the information sought by subsections 111.4(c) and (d)(1) and (3). The complaint makes clear that the allegations are based on statements purportedly made by the candidate taken from news reports and on the candidate's EIGA statement. It is thus evident that the allegations are based upon information and belief rather than personal knowledge. 11 C.F.R. § 111.4(c). As the complainants explicitly name the candidate and alleges that he violated specific provisions of the Act and regulations, the complaint satisfies subsection 111.4(d)(1) as it pertains to him. The complaint also contains a clear and concise recitation of facts describing violations of the Act and regulations, and thus meets the criteria of subsection 111.4(d)(3).

Moreover, the assertion that dismissal would be required if the complaint failed to provide the information listed in the above-discussed subsections is in error. Dismissal is only required if a complaint fails to comply with the criteria set out in 2 U.S.C. § 437g(a)(1) and 11 C.F.R. § 111.4(b). The complaint in this matter clearly meets those requirements as the complainants are identified and it is signed and sworn to in the presence of a notary. Unlike a failure to comply with Section 437g(a)(1) or subpart b of the Commission's regulations, there is no requirement that a complaint be dismissed if it fails to provide all the information set forth in subparts (c) and (d). This distinction was made clear in the Explanation and Justification which the Commission included when transmitting Part 111.4 to Congress in 1980. There, the Commission stated that subsection (b) "sets forth the statutory requirements with which a complaint must comply in order for the Commission to act upon it," while subsection (d) "should be complied with" and "may" be a basis for the Commission "to take no action on a complaint" if it fails to provide sufficient information. 45 Fed. Reg. 15088, March 7, 1980; *see also* MURs 3667, 3110, 2782. As discussed above, the complaint meets the statutory requirements and

provides information sufficient for the Commission to make the necessary initial determinations in this matter, and thus should not be dismissed.

The facts surrounding the candidate loans and contributions raise serious questions and suggest multiple violations of the Act and regulations. Each of the transactions is discussed below.

\$67,500 Loan

As the response to the complaint fails to address the allegations about the \$67,500 loan, we are left with the information in press accounts, which are mainly based upon the candidate's purported statements about the loan. As discussed in detail below, the information at hand strongly suggest the loan from the undisclosed source was taken by the candidate for the purpose of financing his campaign and was an excessive contribution. In particular, we discuss the timing of the loans, the secret nature of the loan from the friend, and the information indicating that the loan from the friend was not arms length and that, at best, the cattle transactions were undertaken to make the initial loan from the friend have, or at least appear to have, a business purpose rather than a campaign-related purpose.

First, there is the short duration between when the loan from the undisclosed source was assertedly taken and the candidate loaned his "personal funds" to the campaign. Although the candidate reportedly made differing statements about when he received the loan from the unknown friend, in any case it was a relatively short time between the time the funds were loaned by the undisclosed friend and funds of the same or nearly the same amount were deposited into the campaign's account. Indeed, just five days after the campaign received the \$67,500 "candidate loan" on August 5, 1998, it reported making a payment of exactly \$67,500 to a consultant for a "media buy."

Second, the loan from the undisclosed source does not appear to have been an arms length business transaction. To begin with, the loan was from a "friend." And although this loan was a substantial sum—in fact exceeding the candidate's total annual income-- it was reportedly made only on a "handshake" (meaning no documentation) and --without any collateral.

As for the cattle transactions, while the candidate has revealed very little about them -- other than that the cattle were bought and sold almost immediately, and without any profit—it appears they were either: (a) undertaken based upon the mistaken assumption that such purchases and sales would actually convert the \$67,500 loan from the undisclosed source into the candidate's "personal funds"; (b) undertaken in an attempt to make the \$67,500 loan from the undisclosed friend appear to have a bona fide business purpose, thus enabling the candidate to pass the proceeds off as his "personal funds" or ; (c) as suggested in the press, the cattle transactions never even occurred but were used to give the undisclosed loan the appearance of a business purpose.

Finally, and perhaps most telling, is the secret nature of the source of the loan. The candidate refused repeated requests to disclose to the press the name of the person who loaned him the funds. Although it is unclear exactly why the source was not revealed, given the totality of the information at hand, it is reasonable to infer that it may have been that the parties to the transaction knew that the true purpose of the loan was to assist Roberts' candidacy--not to undertake a business venture to purchase cattle. Therefore, to minimize or avoid answering questions about the purpose and nature of the loan, the parties agreed to keep the source secret.

In short, the information at hand suggests that the \$67,500 loan was an excessive contribution from the undisclosed source, and that it was improperly reported. As the candidate

appears to have obtained the loan from the undisclosed source for the purpose of financing his campaign, there is reason to believe that he violated Section 441a(f).

\$150,000 Raised through the Auction of Candidate's Artwork

The alleged sales of the candidate's sculptures, which reportedly yielded approximately \$150,000, all or some portion of which was used to finance the campaign, also raise serious questions. The candidate reportedly sold the 29 bronze western sculptures at the auction for up to \$12,000 apiece.

Proceeds from the sale of assets of a candidate are considered "personal funds" within the meaning of 11 C.F.R. § 110.10. However, the sale of goods for the purpose of financing a campaign is a fundraising event. As noted, the entire amount paid by a contributor for the purchase of a fundraising item is a contribution, and is thus subject to the Act's limitations, prohibitions and reporting requirements. *See* 11 C.F.R. § 100.7(a)(2).

While little is known about the auction, the limited information at hand suggests that it was a fundraising event. To begin with, the auction was reportedly held in late August or early September, 1998. This was right in the midst of the campaign, in fact in close proximity to both the primary and runoff elections. In addition, while the candidate admitted he was not in the business of selling his own artwork and he acknowledged in a letter that accompanied his amended EIGA statement that as late as July of 1998, there was no established market value for it, he claims to have sold it for up to \$12,000 apiece, and for a total of \$150,000, just a few weeks later. In fact, he asserted that in July that he believed that the market value of all his artwork was \$1,000, yet at the auction--- held just several weeks later---he sold it for \$150,000. These facts together suggest that the auction was a fundraising vehicle for the Roberts campaign and that the amounts purportedly paid for the sculptures were "contributions" under the Act.

If the auction was a campaign event, then as noted, the entire amount paid by any person to purchase the items sold was a contribution. See 11 C.F.R. 100.7(a)(2). Given the news reports state that 29 pieces of Mr. Roberts' artwork allegedly sold for \$150,000, most of the contributions would appear to have been well in excess of the limitations of the Act, and the acceptance of such funds was a violation of Section 441a(f). Accordingly, there is reason to believe that Walt Roberts violated Section 441a(f).

Additional Candidate Contribution

The candidate reportedly contributed \$35,500 to his campaign on March 31, 1998. As noted, the candidate's total 1997 income was \$64,862 according to his EIGA statement, and his income for the first six months of 1998 was reportedly \$17,251. The candidate also reported limited assets on his EIGA statement. The candidate contribution of March 31, an outright gift, assertedly from personal funds, equaled more than one half his 1997 income. In light of the circumstances, there is reason to believe that Walt Roberts violated Section 441a(f).

\$50,000 Loan from McAlester Industrial Credit Company, Inc.

The \$50,000 loan from the candidate on September 1, 1998, which is the subject MUR _____ appears to have been a prohibited corporate contribution. The loan document is signed September 1, 1998, and the loan was reportedly made to the committee that same day. According to news articles, most of the funds, approximately \$40,000, were used to purchase television ads that aired just before the runoff election on September 15, 1998. See Complaint at Exhibits 2 and 5. These facts clearly suggest that the loan was obtained from McAlester Inc. for the purpose of financing the Roberts campaign. The loan appears to have been repaid on March 31, 1999, approximately seven months later.

McAlester Inc. is a corporation which, the candidate reportedly stated, normally finances industrial projects. Complaint at Exhibit 5. McAlester Inc. does not appear to be a qualified lending institution within the meaning of 2 U.S.C. § 431(8). It thus appears that a corporate contribution was made and accepted, in violation of Section 441b(a). As Walt Roberts was involved in obtaining the loan, there is reason to believe that he violated Section 441b(a).

The information at hand also raises other questions about the loan. According to Dun & Bradstreet, McAlester Inc. was dissolved on March 2, 1998. The date of dissolution of the corporation was approximately six months before the loan was made. The owner and/or president of McAlester Inc. is W.H. Layden, a political ally of Mr. Stipe, the campaign's chief fund-raiser. Mr. Layden, the corporate president who signed the Supplement to Schedule C which set forth the terms of the loan, and persons who appear to be related to him, contributed heavily to the campaign.⁶ In addition, the candidate's EIGA statement indicates that there was an existing mortgage on the Auction Building (see fn. 3), the alleged collateral for the \$50,000 loan, and it is reported that Mr. Stipe and his wife had co-signed that mortgage. Given that, according to the candidate's EIGA statement, the first mortgage was included within the same range as the value of the Auction Building (\$50,001 and \$100,000) and that Mr. Stipe and his spouse signed the first mortgage, it is questionable whether the candidate's equity interest in the building equals the \$50,000 that McAlester purportedly loaned him in September of 1998, during the heat of the campaign.

In short, the above information suggests that the mortgage was not an arms length transaction in the ordinary course of McAlester Inc.'s business. In light of all the foregoing,

⁶ Mr. Layden contributed \$3,000 to the campaign, while persons with the same surname and from the same city contributed an additional \$11,900.

there is reason to believe that Walt Roberts violated Section 441b(a) by accepting a corporate contribution.

Contributions from Stipe Law Firm Personnel

As previously discussed, the Roberts campaign was, according to news reports, operated in part from Mr. Stipe's law office, and Mr. Stipe was the candidate's mentor and chief fundraiser. Complaint at Exhibit 1. The committee's disclosure reports indicate that numerous support staff of the Stipe Law Firm had reportedly donated substantial sums to the campaign. Specifically, eight members of the law firm's support staff made the following contributions, totaling \$12,530:

WALT ROBERTS FOR CONGRESS					
CONTRIBUTIONS MADE BY STIPE LAW FIRM EMPLOYEES					
NAME	TITLE	DATE	PRIMARY	RUN-OFF	GENERAL
Barnes, Ginger	Admin. Asst.	10/17/98			\$500.00
Benson, Jamie	Secretary	3/28/98	\$1,000.00		
Benson, Jamie	Self	8/14/98		\$990.00	
Dusenberry, Shelly	Paralegal	8/14/98		\$950.00	
Dusenberry, Shelly	Self	10/17/98			\$300.00
Ervin, Gloria	Accountant	8/18/98		\$990.00	
Ervin, Gloria	Inspector	8/17/98	\$980.00		
Montgomery, Cynthia	Secretary	3/31/98	\$1,000.00		
Montgomery, Cynthia	Paralegal	8/17/98		\$970.00	
Spears, Charlene	Management	3/30/98	\$1,000.00		
Spears, Charlene	Admin. Asst.	8/14/98		\$950.00	
Thetford, Dana	Paralegal	9/3/98		\$950.00	
Thetford, Dana	Paralegal	10/29/98			\$1,000.00
Tumer, Deborah	Paralegal	8/14/98	\$950.00		
		TOTALS	\$4,930.00	\$5,800.00	\$1,800.00

Many of the above contributions were received within the period covered by Section 434(b)(6), but because they were in amounts just below the threshold, e.g., \$950, \$970, 48 hour notices, which might bring these contributions to public attention prior to the election, were not

required. These contributions from Stipe Law Firm support staff, and the fact that they fell just short of the 48 hour reporting threshold, were discussed in a press report that appeared during the campaign. Complaint at Exhibit 6.

The above contributions, each close to \$1,000, were of very sizable amounts to be given by support staff. Many of the contributions were reportedly received on the same dates. In light of the facts at hand, specifically the large amounts contributed by this support staff, that the campaign allegedly operated from the Stipe Law Firm, Mr. Stipe's substantial involvement in Roberts' campaign efforts and that the amounts were often just below the 48 hour reporting threshold, it appears that these contributions may have been made by Mr. Stipe and/or the Stipe Law Firm in the names of support staff. Indeed, these appear to be more evidence of "unlawful third party contributions" which the complainants urge the Commission to investigate. Complaint at page 5. Given that the Stipe Law Firm reportedly doubled as the Roberts' campaign headquarters, that Gene Stipe was the campaign's chief fund-raiser and Walt Roberts' close political ally and that the candidate himself provided consulting services to the Stipe Law Firm, there is reason to believe that Walt Roberts violated 2 U.S.C. §§ 441f and 441a(f) by knowingly accepting such contributions.

V. NATURE OF THE VIOLATIONS

The information at hand supports the complainants' assertions that Walt Roberts knowingly and willfully violated the Act. Complaint at page 1.

Through the various transactions, the respondent appears to have engaged in a deliberate attempt to circumvent the Act's limitations and reporting requirements. First, there is the manner in which the respondent attempted to keep from public disclosure information about most of the transactions. Specifically, during the course of the campaign, the candidate repeatedly refused to

divulge information about the source of the \$67,500 loan, the alleged cattle sales or the auction. One inference that can be drawn from the way in which the transactions were kept secret is that the respondents knew that the various transactions were impermissible. As the courts have recognized, “efforts at concealment [may] be reasonably explainable only in terms of motivation to evade’ lawful obligations.” *United States v. Hopkins*, 916 F.2d at 214.

Second, the facts at hand suggest that at least some of the transactions may not have been bona fide but rather created to make the funds appear to be from permissible sources. As previously discussed in detail, if the cattle sales occurred at all, they may have been undertaken in an attempt to make the \$67,500 loan appear legal. The facts also suggest that the auction of the candidate’s artwork may have been a last-minute scheme to circumvent the Act’s limitation on contributions. Regarding the \$50,000 loan from McAlester, a corporation, there is information suggesting McAlester Inc. was not even in business at the time in question, and the facts suggest that the loan was not arms length or in the ordinary course of business. And then there are the numerous contributions of close to \$1,000 from support staff of the law firm of the campaign’s alleged chief fund-raiser, that may have been reimbursed. In short, the sum of the facts suggest that the foregoing transactions were not genuine, and if they occurred at all, they were undertaken only to make the source of the funds appear legitimate. The “elaborate scheme[s] for disguising” the true source of the funds suggests that the violations were knowing and willful. *Hopkins*, 916 F. 2d at 214-215.

Finally, there is the pattern of the transactions. The sum of the known facts—including the loan from the undisclosed friend, the alleged cattle sales, the auction, the corporate loan and the apparently reimbursed contributions, suggests a concerted scheme or series of schemes. These fundraising schemes appear to have begun with the \$67,500 loan in early August, then the

auction in late August or early September, the corporate loan in September and the apparently reimbursed contributions, mainly in mid-August and up until October. In each case, the actual source of the funds was disguised on campaign reports.

Given the forgoing, it appears that the violations were knowing and willful. Accordingly, there is reason to believe that Walt Roberts knowingly and willfully violated 2 U.S.C. §§ 441a(f), 441b(a) and 441f.

24-04-406-0233

SUBPOENA TO PRODUCE DOCUMENTS
ORDER TO SUBMIT WRITTEN ANSWERS

TO: Chris Clark, Treasurer
Walt Roberts for Congress

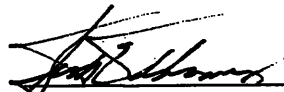
c/o G. Michael Blessington, P.C.
Law Offices
4111 N. Lincoln Boulevard
Oklahoma City, OK 73105

Pursuant to 2 U.S.C. § 437d(a)(1) and (3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order and Subpoenas you to produce the documents requested on the attachment to this Subpoena. Legible copies which, where applicable, show both sides of the documents may be substituted for originals.

Such answers must be submitted under oath and must be forwarded to the Office of the General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463, along with the requested documents within 30 days of receipt of this Order and Subpoena.

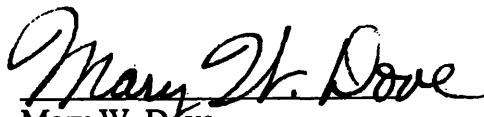
WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his
hand in Washington, D.C. on this *12th* day of *October*, 1999.

For the Commission,



Scott E. Thomas
Chairman

ATTEST:


Mary W. Dove
Secretary to the Commission

Attachments
Instructions and Definitions
Questions and Document Requests

04-03-1999 14:03

INSTRUCTIONS

In answering this Subpoena to Produce Documents and Order to Submit Written Answers, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each response is to be given separately and independently, and is to repeat verbatim the interrogatory or document request to which it is responding. Unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories or requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the following interrogatories and document requests shall refer to the time period from January 1, 1998 to the present.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" or "your" shall mean the named respondents in this action to whom these discovery requests are addressed, including all officers; employees, whether paid or unpaid; supervisors; volunteers; agents or persons otherwise working on behalf of or at the request of the named respondent; co-workers; subordinates; staff or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers, records and magnetic or electronic media of every type in your possession, custody, or control, or known by you to exist. The term document includes but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained. If a document request calls for a document that is maintained on or in a magnetic, optical or electronic medium (for example, but not limited to computer tape, diskette, or CD-ROM), provide both "hard" (i.e., paper) and "soft" (i.e., in the magnetic or electronic medium) copies, including drafts, and identify the name (e.g., WordPerfect, Microsoft Word for Windows, Pro Write, etc.) and version numbers by which the document(s) will be most easily retrieved.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document, the author of the document, and all recipients of the document (including all persons, other than the primary recipient(s) of the document, who received copies, such as "cc" and "bcc" recipients).

"Identify" with respect to a natural person shall mean state the full name, the most recent business and residence addresses and the telephone numbers of the person, the present occupation or position of such person, the social security number of the person, and the nature of the connection or association that person has to any party in this proceeding.

If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

“And” as well as “or” shall be construed distinctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and may otherwise be construed to be out of their scope.

QUESTIONS AND DOCUMENT REQUESTS

1. Disclosure reports for Walt Roberts for Congress (or “Roberts campaign”) indicate that it received the following contributions/loans from Walt Roberts’ “personal funds”:

- a. \$35,500 contribution on March 31, 1998
- b. \$67,500 loan on August 5, 1998
- c. \$17,000 loan on August 17, 1998
- d. \$50,000 loan on September 1, 1998
- e. \$10,000 loan on September 22, 1998
- f. \$ 2,650 loan on December 1, 1998

With respect to each contribution/ loan listed above, separately provide:

- a. the form of payment in which each contribution/loan was in when it was provided to the Roberts campaign, e.g., cash, check, money order, wire transfer;
- b. identify the person(s) from Walt Roberts for Congress who received the funds (cash, checks, money order, wire transfer);
- c. identify the person(s) who deposited the proceeds of each contribution/loan into the account(s) of Walt Roberts for Congress;
- d. identify any person(s) (whether or not affiliated with or employed by Walt Roberts for Congress) involved in raising these funds, including but not limited to negotiating such loans, drafting any agreements in connection with such loans, completing loan applications, appearing at meetings with persons or entities which loaned any of the funds in question, etc.

2. Identify and produce all documents which relate to any of the contributions/loans listed above in Interrogatory 1, including but not limited to bank statements, correspondence, checks, money orders, check registers, check ledgers, promissory notes, wire transfers, agreements, notes, memoranda, etc.

3. Identify each bank account or depository used by Walt Roberts for Congress during 1998 to make disbursements of any kind (provide the name and location of each bank or depository, the account number(s) and identify the account owners(s)).

4. Disclosure reports of the Roberts' campaign show that it made a payment of \$67,500 on August 10, 1998 to Strother, Duffy & Strother for a "media buy." State when it was first determined and/or agreed that the Roberts' campaign would make this purchase, and identify and produce all documents related to that purchase, including but not limited to proposals, contracts, agreements, correspondence, memoranda, scripts of ads, invoices, purchase orders, notes, checks, check registers, check ledgers, bank statements.

5. When you first reported the \$67,500 contribution from Walt Roberts on August 13, 1998, it was not reported as a loan. Later—on September 11, 1998—you reported that the \$67,500 was a loan from the candidate. Explain the reason for this difference, specifically stating whether it reflects a change in the terms of Walt Roberts' \$67,500 contribution from a gift to a loan. Identify and produce all documents related to any change in the terms of the transaction or that relate to this change in the reporting of the nature of the \$67,500.

6. It was reported that during August or September of 1998, Walt Roberts sold artwork to raise \$150,000 for Walt Roberts for Congress. See the enclosed Factual and Legal Analysis and Complaint at Exhibits 5 and 9. State whether any person employed by or affiliated with Walt Roberts for Congress was involved in or participated in selling the artwork and whether the artwork was sold at an event of some kind, e.g., an auction. If so:

a. identify all such persons, and state their involvement, e.g., were they involved in planning and carrying out the sales;

b. identify all persons who attended the event to assist in carrying it out;

c. state the date(s) when such event was held;

d. state how many persons were in attendance at the event and identify all known persons in attendance;

e. state whether there was any fee or charge in connection with attending the event, and if so, state the amount charged per person and the total amount received from such fees or charges;

f. identify each person who purchased any piece of artwork;

g. state how much each purchaser paid for the artwork, and the manner in which each purchaser made payment, e.g., check, money order, cash;

- h. state the total number of pieces of artwork sold;
- i. state the total amount received from all sales of the artwork;
- j. identify the account(s) into which proceeds from the sales were deposited (include account number(s), name of bank(s) or other institution(s) and identify the account owner(s));
- k. identify and produce all documents related to the sales, including but not limited to invoices, contracts, agreements, correspondence, notes, memoranda, checks, check registers, check ledgers, money orders, bank account statements and deposits showing the receipt of the proceeds.

7. If there was an event or auction, state the manner in which it was advertised or communicated to others, e.g., via posters, flyers, billboards, radio, television, telephone, and:

- a. state all the costs incurred in such advertisements or communications;
- b. identify who paid any such costs;
- c. identify and produce all documents related to such advertisements or communications, including but not limited to lists, notes, memoranda, agreements, correspondence, flyers, posters, scripts, newspaper, radio or television advertisements, checks, invoices.

8. State whether Walt Roberts for Congress directly or indirectly received any of the proceeds from the sale of the artwork referenced above. If so:

- a. identify each of the deposits or transfers of such funds into any account of the Roberts campaign, providing the dates, amounts and the account(s) into which each was deposited;
- b. identify and produce all documents related to such deposits or transfers, including but not limited to deposit slips, documents memorializing any transfers, bank statements, checks, check registers, check ledgers, money orders, agreements, correspondence.

9. During 1998, you reported the receipt of contributions from the following persons who appear to have been employed by the Stipe Law Firm: Ginger Barnes, Jamie Benson, Shelly Dusenberry, Gloria Ervin, Cynthia Montgomery, Dana Thetford, Deborah Turner and Charlene Spears.

- a. identify who solicited and/or collected such contributions;
- b. identify who accepted and/or received such contributions;

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- c. identify who deposited such contributions into your bank account;
 - d. identify all persons involved in determining the "identification" of such persons for purposes of your FEC disclosure reports and all persons involved in completing disclosure reports disclosing such contributions;
 - e. state whether you were aware of any payments, forms of compensation or gifts given to such persons in connection with their contributions and if so, describe such payments and who made them;
 - f. identify and produce all documents related to such contributions, including but not limited to correspondence, notes, memoranda, checks, check registers, bank statements.
10. State whether Walt Roberts for Congress occupied any office space at the Stipe Law Firm. If so:
- a. state the address of the office space;
 - b. state the time frame when such space was occupied;
 - c. state the amount of space occupied, e.g. square footage, number of rooms;
 - d. state the amount which Walt Roberts for Congress paid to occupy such space;
 - e. identify and produce all documents related to the use of such space, including but not limited to contracts, agreements, correspondence, memoranda, checks, check registers, bank statements.

FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Walt Roberts for Congress
 Chris Clark, as treasurer

RE: MUR 4818
 MUR 4933

I. GENERATION OF MATTERS

MUR 4818 was generated by a complaint filed by Senators Don Nickles and James M. Inhofe, and Representatives Tom Coburn, Ernest Istook, Jr., Steve Largent, Frank D. Lucas, Wes W. Watkins and J.C. Watts, Jr., and their respective campaign committees (collectively "complainants").

The complaint alleges that Walt Roberts for Congress Committee, and its treasurer ("Roberts campaign" or "committee"), engaged in an illegal laundering scheme in connection with funds totaling up to \$217,500, that were reported as loans from the candidate, Walt Roberts. The complainants contend the Roberts campaign knowingly and willfully accepted the contributions and misreported the true source of such funds, in violation of 2 U.S.C. §§ 441a(f) and 434(b).

MUR 4933 was generated by the Commission in the normal course of carrying out its supervisory duties. See 2 U.S.C. § 437g(a)(2). It involves a \$50,000 loan made to the Roberts campaign on September 1, 1998, consistently reported as a candidate loan, the source of which appears to have been McAlester Industrial Credit, Company, Inc. ("McAlester Inc."), a corporation.

II. APPLICABLE LAW

The Federal Election Campaign Act of 1971, as amended (the "Act"), limits the amount that persons other than multicandidate committees may contribute to any candidate for federal office to \$1,000 per election. 2 U.S.C. § 441a(a)(1)(A). Candidates and political committees are prohibited from knowingly accepting contributions in excess of the limitations at Section 441a. 2 U.S.C. § 441a(f). Candidates for Congress may make unlimited expenditures from their "personal funds." 11 C.F.R. § 110.10(a).¹

Any candidate who receives a contribution or obtains any loan in connection with his or her campaign shall be considered as having received such contribution or obtained such loan as an agent of his or her authorized committee. 2 U.S.C. § 432(e)(2); 11 C.F.R. § 101.2(a).

The term "contribution" includes any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purposes of influencing a federal election.

2 U.S.C. § 431(8)(A)(i). The term "anything of value" includes all in-kind contributions and providing any goods or services without charge, or at a charge which is less than the usual and normal charge. 11 C.F.R. § 100.7(a)(1)(iii)(A). The "usual and normal" charge is the price of the goods in the market from which they ordinarily would have been purchased at the time of the contribution, i.e., the fair market value. 11 C.F.R. § 100.7(a)(1)(iii)(B); *see also* Advisory Opinions ("AO") 1995-24, 1995-8, 1991-10, n. 1, 1984-60.

¹ The Commission's regulations define "personal funds" as: (1) "Any assets which, under the applicable state law at the time he or she became a candidate, the candidate had legal right of access to or control over, and with respect to which the candidate had either: (i) Legal and rightful title, or (ii) An equitable interest"; or (2) Salary or other earned income from bona fide employment, dividends and proceeds from the sale of the candidate's stocks or other investments, bequests to the candidate; income from trusts established before candidacy; income from trusts established after candidacy of which the candidate is a beneficiary; gifts of a personal nature which had been customarily received prior to candidacy; proceeds from lotteries and similar legal games of chance. 11 C.F.R. § 110.10(b)(1) and (2). A candidate may also use a portion of assets jointly owned with his or her spouse, as provided in 11 C.F.R. § 110.10(b)(3).

The entire amount paid as the purchase price for a fundraising item sold by a political committee is a contribution. 11 C.F.R. § 100.7(a)(2). A review of several AOs demonstrates how the Commission has applied the rule. For example, the Commission has stated that a political committee's sale of artwork donated by artists is fundraising activity and thus subject to the limitations and reporting requirements of the Act. AO 1980-34; AO 1982-24. The Commission has also stated that when the sale of goods or services is for the purpose of raising funds for a campaign, rather than for "genuine commercial purposes," contributions result and in such circumstances, the activity was subject to the Act and its limitations, prohibitions, reporting and notice requirements. AO 1989-21 (sale of goods); AO 1992-24 (proceeds from candidate's non-political speeches); AO 1980-24 (sale of tickets to event hosted by volunteer entertainers).

The Act provides that it is unlawful for any corporation to make a contribution or expenditure in connection with a federal election. 2 U.S.C. § 441b(a). Candidates and political committees are prohibited from knowingly accepting contributions from corporations. *Id.* The Act exempts from the definition of "contribution" a loan of money made by certain institutions, e.g., a State Bank, a federally chartered depository institution, or a depository institution the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation ("FDIC") or the National Credit Union Administration, made in the ordinary course of business, but specifies that such loan: (i) shall be considered a loan by each endorser or guarantor, in that proportion that each endorser or guarantor bears to the total number of endorser or guarantors; (ii) shall be made on a basis which assures repayment, evidenced by a written instrument, and subject to a due date or amortization schedule; and (iii) shall bear the usual and customary interest rate of the lending institution. 2 U.S.C. § 431(8)(B)(vii).

All contributions made by a candidate to his or her committee, including candidate loans, and all loans guaranteed by the candidate, must be reported in accordance with 2 U.S.C.

§ 434(b)(B) and (G). If a candidate or political committee obtains a loan from a permissible lending institution, the political committee must provide specific information set forth in 11 C.F.R. § 104.3(d)(1) and (2), including a certification from the lending institution that the borrowers' responses are accurate, and a copy of the loan agreement.

Political committees must report the identification of each person who makes a contribution or contributions with an aggregate value of in excess of \$200 during the reporting period, together with date and amount. 2 U.S.C. § 434(b)(3). A principal campaign committee of a candidate must, within 48 hours of receipt of any contribution of \$1,000 or more received after the 20th day but more than 48 hours before any election, submit notices setting forth the name of the candidate, office sought, identification of the contributor(s), date of receipt and amount. 2 U.S.C. § 434(b)(6)(A).

The Act provides that no person shall make a contribution in the name of another person or knowingly permit his or her name to be used to effect such a contribution and no person shall knowingly accept a contribution made by one person in the name of another person. 2 U.S.C. § 441f; 11 C.F.R. § 110.4(b).

The Act provides that the Commission may find that violations are knowing and willful. 2 U.S.C. § 437g. The knowing and willful standard requires knowledge that one is violating the law. *Federal Election Commission v. John A. Dramesi for Congress Committee*, 640 F. Supp. 985 (D. N. J. 1986). An inference of a knowing and willful violation may be drawn "from the defendants' elaborate scheme for disguising" their actions and that they "deliberately conveyed information that they knew to be false to the Federal Election Commission." *United States v.*

Hopkins, 916 F.2d 207, 214-215 (5th Cir. 1990). "It has long been recognized that 'efforts at concealment [may] be reasonably explainable only in terms of motivation to evade' lawful obligations." *Id.* at 214, *quoting Ingram v. United States*, 360 U.S. 672, 679 (1959).

III. BACKGROUND/ALLEGATIONS

Walt Roberts garnered the most votes in the primary election held on August 25, 1998, and he won the runoff election held on September 15, 1998. Mr. Roberts lost the general election on November 3, 1998 to Representative Wes Watkins.

According to news reports, Roberts is a former state legislator, a rancher and an auctioneer. The Roberts campaign's reports indicate that the candidate was the source of the following funds, totaling \$182,650:

DATE	AMOUNT
March 31, 1998	\$ 35,500
August, 5, 1998	\$ 67,500 loan ²
August 17, 1998	\$ 17,000 loan
September 1, 1998	\$ 50,000 loan
September 22, 1998	\$ 10,000 loan
December 1, 1998	\$ 2,650 loan
TOTAL	\$182,650

The complainants point to information in the public record suggesting a pattern of illegal fundraising. The attachments to the complaint question how Mr. Roberts, with limited income and assets, could make loans of these amounts. Complaint at Exhibits 1 and 3.³ They urge the

² In response to inquiries from the Commission's Reports Analysis Division ("RAD") about the \$67,500 loan, the Committee reported that "The candidate used personal funds only to fund the loan from himself to the campaign." Complaint at Exhibit 8.

³ The candidate's Ethics in Government Act ("EIGA") statement, dated July 6, 1998, and his amended statement, dated October 9, 1998, disclose income of \$17,251 for the covered months of 1998 and \$64,862 for all of 1997. On his EIGA statements, the candidate's total assets consisted of an "Auction Building" valued at between \$50,001 and \$100,000 (but with a mortgage of between the same listed amounts) and horses valued at \$15,001 to

Commission to "fully investigate the campaign activities" of the Roberts campaign "with particular emphasis upon the unreported, excessive and unlawful third-party contributions."

Complaint at page 5. The complaint focuses on the \$67,500 loan made to the campaign on August 5, 1998, and on the candidate's sale of self-made sculptures through which he allegedly generated approximately \$150,000 for the campaign.

According to news reports, when questioned about the source of the \$67,500 loan to his campaign, the candidate claimed that he borrowed funds from a friend, purchased cattle with the funds, promptly sold the cattle without making any profit and then loaned the proceeds to his campaign. The candidate refused to identify the friend. It appears that the amount which the candidate borrowed from the secret friend was \$67,500, the same amount that he loaned to his campaign on August 5, 1998. During the campaign, the candidate reportedly stated that the loan from the undisclosed friend was a "handshake deal with no paperwork and no payments for a year." Complaint at Exhibit 2.

In support of the allegations about the loan and cattle purchases and sales, the complaint points to the conflicting or at least differing assertions which the candidate reportedly made about the transactions. At one point, the candidate reportedly claimed that he received the loan from the friend on August 1, 1998. Complaint at Exhibit 1. As news articles point out, since the loan was made to the campaign on August 5, the alleged cattle purchases and sales would have occurred almost immediately. Another report indicates that the candidate claimed that he received the loan from the unknown source about sixty days before selling the cattle, which, the article concludes, would mean that he borrowed it in late May or early June. Complaint at

\$50,000. As discussed later, in his amended EIGA statement, the candidate included the "artwork" he claimed to have sold at the auction for \$150,000.

Exhibit 5. The complaint and news articles point out that neither the loan nor the cattle were reported on the candidate's Ethics in Government Act ("EIGA") statement, which was signed July 6, 1998. In response to questions about this, the candidate, at one point reportedly claimed that the cattle was left off his EIGA statement by accident, but a day later the candidate is claimed to have asserted that he did not yet own the cattle at the time the form was filed.

Complaint at Exhibit 3.

The complaint alleges that the purchase and sale of cattle, if it occurred at all, was not a bona fide business transaction, but a sham transaction to raise funds for Roberts' campaign. Included with the complaint is a news article which questions whether the cattle was sold to the same concealed friend who made the \$67,500 loan to the candidate. Complaint at Exhibit 1. The complaint points out that Roberts reportedly refused repeated requests from reporters to disclose any documents related to the alleged cattle purchases or sales.

The complaint asserts that other funds used in connection with the campaign were excessive contributions, specifically funds raised through the sale of artwork created by the candidate. Roberts apparently sold 29 pieces of art, western bronze sculptures that he allegedly created, and used the funds (or some portion of them) in connection with his campaign. Complaint at page 4. According to the complaint and press reports, the candidate sold the sculptures for a total of \$150,000 at a single auction held sometime during the Summer of 1998, probably in August or early September. Complaint at page 4 and at Exhibit 9. Roberts allegedly used part of the proceeds from the sale of the sculptures to repay his undisclosed friend the previously discussed \$67,500. He also reportedly used the funds from the alleged sale of sculptures to make the \$17,000 loan on August 17, 1998. Complaint at Exhibit 4.

The complainants argue that the sale of the sculptures was a fundraising activity of the campaign, and, as sculptures were reportedly sold for as much as \$12,000 each, were excessive contributions. Complaint at Exhibit 9. The complaint also states that sale of the artwork resulted in excessive contributions because the prices paid would appear to exceed market value.

Complaint at page 4. In support of the claim that the sale of the sculptures were not bona fide transactions, the complaint points out that in the initial EIGA statement, dated July 6, 1998, the candidate did not include with his assets any sculptures. It was only after the sale of the artwork which yielded \$150,000 received press attention that the candidate amended his EIGA statement to include such artwork.⁴ The complainants further allege that given the apparent time of the auction, probably in late August or early September of 1998, the campaign should have filed 48 hour disclosure notices for the contributions raised at the auction. *See* 2 U.S.C. § 434(a)(6)(A).

IV. RESPONSE TO THE COMPLAINT

The Roberts campaign does not respond to the substance of any of the allegations or information at hand. Instead, they seek dismissal, generally denying that they violated any statute or regulation in which the Commission has jurisdiction and asserting that the complaint does not comply with 11 C.F.R. § 114.4, the regulation which sets forth criteria for complaints. Gene Stipe, who was also notified of the complaint, raises the same defense, and adds that the complaint itself does not mention him by name.

⁴ On October 9, 1998, after news reports in September of 1998, indicated that the candidate had allegedly raised \$150,000 by auctioning off sculptures he had created, but that such assets were not reported on his EIGA, the candidate amended his EIGA statement. The amended statement revealed that, during the period covered by the initial filing, the candidate had possessed: "artwork created and produced by the candidate." The candidate valued the artwork at between \$100,001 and \$250,000. In a cover letter with the amended EIGA, the candidate provided two reasons why these assets were not initially included: "(1) These were not considered by me to be income producing assets as I did not have any intention of selling them at the time; and (2) I felt that since they were my own creations and no fair market value had been established for them, that if they had been reported, the value would not have reached the reportable amount of \$1000.00."

V. MUR XXX

The Roberts campaign's October Quarterly Report disclosed a \$50,000 personal loan from the candidate on September 1, 1998. In response to RAD's inquiries about the source of the loan, the committee stated that the funds were loaned to the candidate by McAlester Inc. Upon further inquiry from RAD, the campaign provided copies of the loan documents, which indicate that the loan was secured through a second mortgage on real estate in the city of McAlester. The mortgage had an 11% interest rate, and was payable in two \$25,000 installments on March 31 and August 31, 1999.

In a response to RAD's inquiries, counsel insisted that there is "obviously some misunderstanding" as the "loan was never made to the Committee or to the campaign by the company" and is thus a personal loan. Counsel explained that the loan was secured through "a building owned by the candidate." *Id.* This is apparently a second mortgage on the Auction Building (the only piece of real estate identified on the candidate's EIGA statement). A press report indicates that State Senator Gene Stipe and his wife co-signed the first mortgage on the Auction Building. Complaint at unmarked exhibit.⁵ Another press report states that McAlester Inc. "is owned by a longtime friend and political ally of Stipe." Complaint at Exhibit 2. This ally is apparently W. H. Layden, the president of McAlester, Inc., who appears to have signed the supplement to Schedule C which was eventually provided to RAD.

In response to RAD's letters and calls informing them that the loan was not from a permissible source, in March of 1999, McAlester Inc. assigned the \$50,000 mortgage to "The Bank N. A."

⁵ This news article is the very last exhibit. It would have been Exhibit 17, but it was not included in the exhibit list.

VI. ANALYSIS
Procedural Defense

The campaign generally denies violations of the Act, but does not address or specifically contest the allegations about the sources of the loans in question. Instead, the respondents mistakenly assert that the complaint does not comply with subsections 111.4(c) and d(1) and (2) and that the alleged failure to comply with those subsections requires dismissal of the complaint.

Contrary to the respondents' assertions, the complaint substantially provides the information sought by subsections 111.4(c) and (d)(1) and (3). The complaint makes clear that the allegations are based on statements purportedly made by the candidate taken from news reports and on the candidate's EIGA statement. It is thus evident that the allegations are based upon information and belief rather than personal knowledge. 11 C.F.R. § 111.4(c). As the complainants explicitly name the candidate and the committee and allege that they violated specific provisions of the Act and regulations, the complaint satisfies subsection 111.4(d)(1) as it pertains to them. The complaint also contains a clear and concise recitation of facts describing violations of the Act and regulations, and thus meets the criteria of subsection 111.4(d)(3).

Moreover, the respondents' assertion that dismissal would be required if the complaint failed to provide the information listed in the above-discussed subsections is in error. Dismissal is only required if a complaint fails to comply with the criteria set out in 2 U.S.C. § 437g(a)(1) and 11 C.F.R. § 111.4(b). The complaint in this matter clearly meets those requirements as the complainants are identified and it is signed and sworn to in the presence of a notary. Unlike a failure to comply with Section 437g(a)(1) or subpart b of the Commission's regulations, there is no requirement that a complaint be dismissed if it fails to provide all the information set forth in subparts (c) and (d). This distinction was made clear in the Explanation and Justification which

the Commission included when transmitting Part 111.4 to Congress in 1980. There, the Commission stated that subsection (b) "sets forth the statutory requirements with which a complaint must comply in order for the Commission to act upon it," while subsection (d) "should be complied with" and "may" be a basis for the Commission "to take no action on a complaint" if it fails to provide sufficient information. 45 Fed. Reg. 15088, March 7, 1980; *see also* MURs 3667, 3110, 2782. As discussed above, the complaint meets the statutory requirements and provides information sufficient for the Commission to make the necessary initial determinations in this matter, and thus should not be dismissed.

The facts surrounding the candidate loans and contributions raise serious questions and suggest multiple violations of the Act and regulations. Each of the transactions is discussed below.

\$67,500 Loan

As the Roberts campaign's response to the complaint fails to address the allegations about the \$67,500 loan, we are left with the information in press accounts, which are mainly based upon the candidate's purported statements about the loan. As discussed in detail below, the information at hand strongly suggest the loan from the undisclosed source was taken by the candidate for the purpose of financing his campaign and was an excessive contribution. In particular, we discuss the timing of the loans, the secret nature of the loan from the friend, and the information indicating that the loan from the friend was not arms length and that, at best, the cattle transactions were undertaken to make the initial loan from the friend have, or at least appear to have, a business purpose rather than a campaign-related purpose.

First, there is the short duration between when the loan from the undisclosed source was assertedly taken and the candidate loaned his "personal funds" to the campaign. Although the

candidate reportedly made differing statements about when he received the loan from the unknown friend, in any case it was a relatively short time between the time the funds were loaned by the undisclosed friend and funds of the same or nearly the same amount were deposited into the campaign's account. Indeed, just five days after the campaign received the \$67,500 "candidate loan" on August 5, 1998, it reported making a payment of exactly \$67,500 to a consultant for a "media buy."

Second, the loan from the undisclosed source does not appear to have been an arms length business transaction. To begin with, the loan was from a "friend." And although this loan was a substantial sum—in fact exceeding the candidate's total annual income-- it was reportedly made only on a "handshake" (meaning no documentation) and --without any collateral.

As for the cattle transactions, while the candidate has revealed very little about them -- other than that the cattle were bought and sold almost immediately, and without any profit—it appears they were either: (a) undertaken based upon the mistaken assumption that such purchases and sales would actually convert the \$67,500 loan from the undisclosed source into the candidate's "personal funds"; (b) undertaken in an attempt to make the \$67,500 loan from the undisclosed friend appear to have a bona fide business purpose, thus enabling the candidate to pass the proceeds off as his "personal funds" or; (c) as suggested in the press, the cattle transactions never even occurred but were used to give the undisclosed loan the appearance of a business purpose.

Finally, and perhaps most telling, is the secret nature of the source of the loan. The candidate refused repeated requests to disclose to the press the name of the person who loaned him the funds. Although it is unclear exactly why the source was not revealed, given the totality of the information at hand, it is reasonable to infer that it may have been that the parties to the

transaction knew that the true purpose of the loan was to assist Roberts' candidacy--not to undertake a business venture to purchase cattle. Therefore, to minimize or avoid answering questions about the purpose and nature of the loan, the parties agreed to keep the source secret.

In short, at this point the information at hand suggests that the \$67,500 loan was an excessive contribution from the undisclosed source, and that it was improperly reported. There is thus reason to believe that the Roberts campaign and its treasurer violated 2 U.S.C. §§ 441a(f) and 434(b).

\$150,000 Raised through the Auction of Candidate's Artwork

The alleged sales of the candidate's sculptures, which reportedly yielded approximately \$150,000, all or some portion of which was used to finance the campaign, also raise serious questions. The candidate reportedly sold the 29 bronze western sculptures at the auction for up to \$12,000 apiece.

Proceeds from the sale of assets of a candidate are considered "personal funds" within the meaning of 11 C.F.R. § 110.10. However, the sale of goods for the purpose of financing a campaign is a fundraising event. As noted, the entire amount paid by a contributor for the purchase of a fundraising item is a contribution, and is thus subject to the Act's limitations, prohibitions and reporting requirements. *See* 11 C.F.R. § 100.7(a)(2).

While little is known about the auction, the limited information at hand suggests that it was a fundraising event. To begin with, the auction was reportedly held in late August or early September, 1998. This was right in the midst of the campaign, in fact in close proximity to both the primary and runoff elections. In addition, while the candidate admitted he was not in the business of selling his own artwork and he acknowledged in a letter that accompanied his amended EIGA statement that as late as July of 1998, there was no established market value for

it, he claims to have sold it for up to \$12,000 apiece, and for a total of \$150,000, just a few weeks later. See *supra* fn. 4. In fact, he asserted that in July that he believed that the market value of all his artwork was \$1,000, yet at the auction--- held just several weeks later---he sold it for \$150,000. These facts together suggest that the auction was a fundraising vehicle for the Roberts campaign and that the amounts purportedly paid for the sculptures were "contributions" under the Act.

If the auction was a campaign event, then as noted, the entire amount paid by any person to purchase the items sold was a contribution. See 11 C.F.R. 100.7(a)(2). Given the news reports state that 29 pieces of Mr. Roberts' artwork allegedly sold for \$150,000, most of the contributions would appear to have been well in excess of the limitations of the Act, and the acceptance of such funds was a violation of Section 441a(f).

It is currently unclear whether all the funds received at the auction were used on the Roberts campaign. At this point, however, it appears that some of the funds were the source of what were reported as loans of personal funds of the candidate.

There is no indication that any of the funds received from the purchasers of the sculptures were treated as "contributions" by the campaign. Thus, at this point, it appears that the campaign failed to report the receipt of such contributions, or to itemize where required, in violation of Section 434(b). Accordingly, there is reason to believe that the Roberts campaign and its treasurer violated Section 441a(f) and 434(b).

In addition to regular disclosure reports, as the complainants assert, the campaign was required to file 48 hour notices regarding contributions of \$1,000 or more received between August 6 and 22, 1998, for the primary, and again between August 27 and September 12, 1998, for the runoff. As the auction was likely held in August or early September of 1998, and the

amounts received at the auction would appear to have been in excess of \$1,000 per election, there is reason to believe that the Roberts campaign and its treasurer violated Section 434(a)(6)(A).

Additional Candidate Contribution

The candidate reportedly contributed \$35,500 to his campaign on March 31, 1998. As noted, the candidate's total 1997 income was \$64,862 according to his EIGA statement, and his income for the first six months of 1998 was reportedly \$17,251. The candidate also reported limited assets on his EIGA statement. The candidate contribution of March 31, an outright gift, assertedly from personal funds, equaled more than one half his 1997 income. In light of this fact and the serious issues raised about the other contributions discussed above, there is reason to believe that the Roberts campaign and its treasurer violated Section 441a(f) and 434(b) with respect to this \$35,500 contribution.

\$50,000 Loan from McAlester Industrial Credit Company, Inc. (MUR XXX)

The \$50,000 loan from the candidate on September 1, 1998 appears to have been a prohibited corporate contribution. The loan document is signed September 1, 1998, and the loan was reportedly made to the committee that same day. According to news articles, most of the funds, approximately \$40,000, were used to purchase television ads that aired just before the runoff election on September 15, 1998. See Complaint at Exhibits 2 and 5. These facts clearly suggest that the loan was obtained from McAlester Inc. for the purpose of financing the Roberts campaign. The loan appears to have been repaid on March 31, 1999, approximately seven months later.

McAlester Inc. is a corporation which, the candidate reportedly stated, normally finances industrial projects. Complaint at Exhibit 5. McAlester Inc. does not appear to be a qualified lending institution within the meaning of 2 U.S.C. § 431(8).

The information at hand also raises other questions about the loan. According to Dun & Bradstreet, McAlester Inc. was dissolved on March 2, 1998. The date of dissolution of the corporation was approximately six months before the loan was made. The owner and/or president of McAlester Inc. is W.H. Layden, a political ally of Mr. Stipe as well as the candidate. Mr. Layden, the corporate president who signed the Supplement to Schedule C which set forth the terms of the loan, and persons who appear to be related to him, contributed heavily to the campaign.

In short, the above information suggests McAlester is a corporation which made a prohibited contribution which the Roberts campaign, and its treasurer, knowingly accepted and that the mortgage was not an arms length transaction in the ordinary course of McAlester Inc.'s business. In light of all the foregoing, there is reason to believe the Roberts campaign and its treasurer, violated Section 441b(a).

Contributions from Stipe Law Firm Personnel

As previously discussed, the Roberts campaign was, according to news reports, operated in part from Mr. Stipe's law office, and Mr. Stipe was the candidate's mentor and chief fundraiser. Complaint at Exhibit 1. The Robert campaign's disclosure reports indicate that numerous support staff of the Stipe Law Firm had reportedly donated substantial sums to the campaign. Specifically, eight members of the law firm's support staff made the following contributions, totaling \$12,530:

WALT ROBERTS FOR CONGRESS					
CONTRIBUTIONS MADE BY STIPE LAW FIRM EMPLOYEES					
NAME	TITLE	DATE	PRIMARY	RUN-OFF	GENERAL
Barnes, Ginger	Admin. Asst.	10/17/98			\$500.00
Benson, Jamie	Secretary	3/28/98	\$1,000.00		
Benson, Jamie	Self	8/14/98		\$990.00	
Dusenberry, Shelly	Paralegal	8/14/98		\$950.00	
Dusenberry, Shelly	Self	10/17/98			\$300.00
Ervin, Gloria	Accountant	8/18/98		\$990.00	
Ervin, Gloria	Inspector	8/17/98	\$980.00		
Montgomery, Cynthia	Secretary	3/31/98	\$1,000.00		
Montgomery, Cynthia	Paralegal	8/17/98		\$970.00	
Spears, Charlene	Management	3/30/98	\$1,000.00		
Spears, Charlene	Admin. Asst.	8/14/98		\$950.00	
Thetford, Dana	Paralegal	9/3/98		\$950.00	
Thetford, Dana	Paralegal	10/29/98			\$1,000.00
Turner, Deborah	Paralegal	8/14/98	\$950.00		
		TOTALS	\$4,930.00	\$5,800.00	\$1,800.00

Many of the above contributions were received within the period covered by Section 434(b)(6), but because they were in amounts just below the threshold, e.g., \$950, \$970, 48 hour notices, which might bring these contributions to public attention prior to the election, were not required. These contributions from Stipe Law Firm support staff, and the fact that they fell just short of the 48 hour reporting threshold, were discussed in a press report that appeared during the campaign. Complaint at Exhibit 6.

The above contributions, each close to \$1,000, were of very sizable amounts to be given by support staff. Many of the contributions were reportedly received on the same dates. In light of the facts at hand, specifically the large amounts contributed by this support staff, that the campaign allegedly operated from the Stipe Law Firm, Mr. Stipe's substantial involvement in Roberts' campaign efforts and that the amounts were often just below the 48 hour reporting threshold, it appears that these contributions may have been made by Mr. Stipe and/or the Stipe

Law Firm in the names of support staff. Indeed, these appear to be more evidence of “unlawful third party contributions” which the complainants urge the Commission to investigate.

Complaint at page 5. Given that the Stipe Law Firm reportedly doubled as the Roberts’ campaign headquarters, that Gene Stipe was the campaign’s chief fund-raiser and Walt Roberts’ close political ally and that the candidate himself provided consulting services to the Stipe Law Firm, there is reason to believe that the Roberts campaign and its treasurer violated 2 U.S.C. § 441f and 441a(f) by knowingly accepting such contributions.

VII. NATURE OF THE VIOLATIONS

The information at hand supports the complainants’ assertions that the Roberts campaign knowingly and willfully violated the Act through “sham financial transactions and fraudulent campaign filings.” Complaint at page 1.

The Roberts campaign, through the various transactions, appears to have engaged in a deliberate attempt to circumvent the Act’s limitations and reporting requirements. First, there is the manner in which the Roberts’ campaign attempted to keep from public disclosure information about most of the transactions. Specifically, during the course of the campaign, the candidate repeatedly refused to divulge information about the source of the \$67,500 loan, the alleged cattle sales or the auction. One inference that can be drawn from the way in which the transactions were kept secret is that the respondents knew that the various transactions were impermissible. As the courts have recognized, “efforts at concealment [may] be reasonably explainable only in terms of motivation to evade’ lawful obligations.” *United States v. Hopkins*, 916 F.2d at 214.

Second, the facts at hand suggest that at least some of the transactions may not have been bona fide but rather created to make the funds appear to be from permissible sources. As

previously discussed in detail, if the cattle sales occurred at all, they may have been undertaken in an attempt to make the \$67,500 loan appear legal. The facts also suggest that the auction of the candidate's artwork may have been a last-minute scheme to circumvent the Act's limitation on contributions. Regarding the \$50,000 loan from McAlester, a corporation, there is information suggesting McAlester Inc. was not even in business at the time in question, and the facts suggest that the loan was not arms length. And then there are the numerous contributions of close to \$1,000 from support staff of the law firm of the campaign's alleged chief fund-raiser, that may have been reimbursed. In short, the sum of the facts suggest that the foregoing transactions were not genuine, and if they occurred at all, they were undertaken only to make the source of the funds appear legitimate. The "elaborate scheme[s] for disguising" the true source of the funds suggests that the violations were knowing and willful. *Hopkins*, 916 F. 2d at 214-215.

Finally, there is the pattern of the transactions. The sum of the known facts—including the loan from the undisclosed friend, the alleged cattle sales, the auction, the corporate loan and the apparently reimbursed contributions, suggests a concerted scheme or series of schemes. These fundraising schemes appear to have begun with the \$67,500 loan in early August, then the auction in late August or early September, the corporate loan in September and the apparently reimbursed contributions, mainly in mid-August and up until October. In each case, the actual source of the funds was disguised on campaign reports. And with respect to all but the apparently reimbursed support staff contributions, the Roberts' campaign repeatedly reported the source of the illegal contributions as the candidate's "personal funds."

Given the forgoing, it appears that most of the violations were knowing and willful. Accordingly, there is reason to believe that Walt Roberts for Congress and Chris Clark, as treasurer, knowingly and willfully violated 2 U.S.C. §§ 441a(f), 441b(a), 441f, and 434(b).

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